



CV 03-0038 #1

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JAN 9 2003 DJ

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

AMIN S LAKHA, a married man in his
separate estate,

Plaintiff,

vs

BP WEST COAST PRODUCTS LLC, a
Delaware limited liability company,

Defendant.

CV03 0038R
COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES PURSUANT
TO PETROLEUM MARKETING
PRACTICES ACT

Plaintiff, Amin S Lakha, states and alleges as follows.

I. JURISDICTION AND VENUE

1 This is an action for injunctive relief and damages brought, *inter alia*,
pursuant to the Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. § 2801, et seq

2 This court has jurisdiction over the subject matter hereof pursuant to 15
U.S.C. § 2805(a), 28 U.S.C. § 1331 and 28 U.S.C. § 1367

3. Plaintiff is a resident of King County, Washington

4 Defendant is a Delaware limited liability company that maintains offices in
and conducts business in King County, Washington.

COMPLAINT PURSUANT TO PETROLEUM
MARKETING PRACTICES ACT

CASE NO. _____ - 1

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ORIGINAL

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309148 Siss

5 Venue and jurisdiction are proper in this court

II. BACKGROUND FACTS: PARTIES AND THEIR CONTRACT

6 Plaintiff and defendant are parties to a certain am/pm PMPA Franchise Agreement dated October 5, 2001 (the "Franchise Agreement") and am/pm Mini Market Agreement also dated October 5, 2001 ("am/pm Agreement") for operation of a gasoline station and convenience store located at 220 S E Everett Mall Way, Everett, Snohomish County, Washington (the "Facility") The Franchise Agreement and am/pm Agreement are collectively referred to herein as "the Agreements." The Agreements were entered into between plaintiff and Atlantic Richfield Company, a Delaware Corporation Defendant has represented to plaintiff that it is the successor in interest to Atlantic Richfield Company ("ARCO") with respect to the Agreements All references herein to "defendant" mean this defendant and ARCO.

7. The Agreements are an extension or renewal of previous, similar franchise and am/pm agreements that have been continuously in place between plaintiff and ARCO for this Facility dating back to 1992

8. Throughout this period of operation, plaintiff has maintained regular, routine and constant reporting to and communication with defendant's sales and marketing representatives assigned by defendant for this Facility, including daily, monthly and annual reports of all sales of motor fuel and mini-mart sales conducted from the Facility, on reporting forms and pursuant to the reporting procedures prescribed by defendant

9 During this period, as a result of plaintiff's actions, this Facility has been among the most productive and successful of defendant's retail outlets in Western Washington in terms of motor fuel and am/pm mini-market sales

10 Plaintiff has during this period invested substantial funds and resources toward

1 building the level of sales, goodwill and value of the Facility and has paid substantial sums
 2 to defendant in rent, franchise fees, royalties and contract renewal fees and has purchased
 3 over twenty-five million gallons of motor fuel gasoline from defendant for re-sale from the
 4 Facility

5 11 In March 2002, plaintiff entered into a purchase and sale agreement with an
 6 unrelated third party who sought to purchase the business. The Agreements permit such
 7 sale, subject to certain conditions set forth in the Agreements.

8 12 Plaintiff provided prompt notice of such pending sale to defendant and
 9 requested defendant's approval of the sale and assignment of the Agreements, in accordance
 10 with the terms and conditions of the Agreements permitting such transfer

11 13. In response to such notification, instead of processing the application for
 12 approval of the assignment, defendant indicated it had plans already then in place not to
 13 renew the Agreements when their current term concluded in October 2004, which at that
 14 point was approximately 2-1/2 years into the future. As a result, plaintiff's pending sale was
 15 canceled by the purchaser

16 14 Defendant provided no reason for its statement of its intent, 2-1/2 years in
 17 advance, not to renew the Agreements.

18 15. In June of 2002, plaintiff met with defendant's regional sales manager and
 19 franchise consultant, who informed plaintiff that defendant's plan for the Facility was to sell
 20 it to a buyer who would enter into a long-term franchise and fuel supply contract with
 21 defendant for the Facility

22 16. However, defendant would not be able to divest itself of the Facility until, at
 23 the earliest, after the end of plaintiff's existing Agreements, which then still had nearly 2-1/2
 24 years remaining

1 17. Accordingly, defendant's representative advised plaintiff to make an offer to
2 purchase the Facility and underlying real property, which plaintiff agreed to do

3 18 At this same time, plaintiff notified defendant that plaintiff was taking on a
4 co-owner and intended to seek ARCO approval for that, which would take the form of
5 assigning the franchise to plaintiff's existing corporation at the site, which corporation would
6 be jointly owned between plaintiff and his new co-owner and as to which plaintiff would
7 retain at least a fifty percent ownership interest as required by the Agreements

8 19 Defendant's regional sales manager advised plaintiff not to seek such approval
9 at that time since, if plaintiff were going to be making an offer to purchase the land and
10 Facility, the franchise agreements would in that event have to be replaced at the time of such
11 purchase, which would mean there would be nothing to assign, and it would simply confuse
12 the process to have two seemingly conflicting applications pending at the same time.

13 20. Based upon those representations and direction given to plaintiff by
14 defendant's regional sales manager, plaintiff submitted a detailed written proposal in July
15 2002 to purchase the Facility and the land from defendant

16 21. In September 2002, defendant rejected plaintiff's proposal without any
17 counterproposal or offer to sell the Facility and land to plaintiff

18 22 In early October 2002, defendant's regional sales manager and franchise
19 consultant again met with plaintiff and advised that defendant desired to take back the
20 Facility and terminate the Agreements prior to the end of their existing term Plaintiff
21 advised he would be willing to consider such a proposal only if defendant were willing to
22 make concessions with respect to two other facilities owned by plaintiff and also under
23 contract with defendant.

24 23 Defendant's representative scheduled a follow-up meeting to hear plaintiff's

1 counterproposal on October 31, 2002

2 24 However, prior to the date of that meeting, defendant's representative caused
3 certain "notices of default" to be delivered to the Facility, claiming plaintiff was in default
4 under the Agreements. Such notices were part of a systematic campaign of harassment
5 which defendant commenced following plaintiff's proposal to purchase the Facility and land.
6 For example, the notices included a claim that plaintiff was "in default" under the
7 Agreements because a clerk was "not in uniform" for not wearing a name tag and wearing
8 "capri type pants," a notice there was no food in a food warmer at 4:00 p.m., and a notice
9 that plaintiff was "in default" for not being personally present at the Facility at least 40 hours
10 per week, even though defendant was fully aware plaintiff owns two other ARCO facilities
11 with contracts similar to the Agreements

12 25. Following the early October meeting in which defendant's representatives
13 proposed obtaining plaintiff's early release of the Agreements, defendant caused an
14 additional series of "default notices" to be sent to the Facility, alleging violation of the
15 Agreements based on events occurring more than two years previously and on the fact that
16 plaintiff operates a portion of the business through a corporation of which he had been the
17 sole shareholder, of which defendant had been aware more than 120 days

18 26. All of the conditions cited in the pattern of "default notices" delivered to the
19 Facility following plaintiff's meetings with defendant in which defendant sought to acquire
20 the Facility prior to the end of the Agreement were for matters which were either immaterial,
21 no longer existing, or already known and consented to by defendant and of no adverse effect
22 on the franchise relationship.

23 27 Less than ten days prior to the next-scheduled meeting between plaintiff and
24 defendant's representatives, defendant caused a "Notice of Termination" to be delivered to

1 the Facility, on October 22, 2002 The Notice of Termination asserted it was based on the
 2 fact that plaintiff uses a corporation for operation of the Facility, which he has done for
 3 nearly ten years and as to which defendant has had prior notice, and on an event that
 4 occurred in September 2000, more than two years prior to the Notice of Termination, which
 5 had been completely concluded and as to which the individual responsible had been
 6 discharged and was no longer involved in operation of the Facility

7 28 Defendant's Notice of Termination is not in compliance with the PMPA and
 8 does not justify termination of plaintiff's rights in the Facility and the Agreements

9 29 Defendant's Notice of Termination was further provided contrary to the
 10 requirements of the Gasoline Dealer Bill of Rights Act, RCW Ch. 19.120, and provided
 11 in bad faith, contrary to the requirements of that Act.

12 **III. First Cause of Action - Injunctive Relief Under the PMPA**

13 30 The PMPA establishes minimum federal standards governing termination and
 14 nonrenewal of franchise relationships between refiners/suppliers such as defendant and
 15 franchisees such as plaintiff.

16 31. The PMPA prohibits termination or nonrenewal of any agreement subject to
 17 PMPA provisions except upon proper grounds

18 32. The PMPA permits termination or nonrenewal of a PMPA franchise
 19 agreement only where the franchisee fails to comply with a provision that is both reasonable
 20 and of substantial significance to the franchise relationship.

21 33. The notice of termination presented by defendant to plaintiff with respect to
 22 the Facility and the Agreements did not and does not comply with the requirements of the
 23 PMPA for termination of the franchise relationship between plaintiff and defendant.

24 34 None of the grounds asserted by defendant for termination of the Agreements

1 and of defendant's interest in the Facility warrants termination of the parties' relationship nor
2 of the Agreements

3 35 Defendant is further estopped from asserting as grounds for termination the
4 bases alleged in the Notice of Termination

5 36. Plaintiff will sustain substantial losses and irreparable injury unless defendant
6 is enjoined from terminating the Agreements

7 **IV. Second Cause of Action - Injunctive Relief and Damages Pursuant to the**
8 **Gasoline Station Dealers Bill of Rights Act**

9 37. In attempting wrongfully to terminate plaintiff's rights in the Facility and
10 under the Agreements, defendant has acted in bad faith and in violation of the Gasoline
11 Station Dealers Bill of Rights Act, RCW Ch 19 120 ("the Act").

12 38. As a result of defendant's wrongful acts in attempting to interfere with
13 plaintiff's rights and benefits arising pursuant to the Agreements, plaintiff has sustained
14 losses and damages in amounts to be proven at the time of trial.

15 39 Plaintiff will sustain additional losses and irreparable injury unless defendant
16 is enjoined from continuing in its wrongful attempts to deny plaintiff his rights arising
17 pursuant to the Agreements and the Act

18 **V. Third Cause of Action - Tortious Interference**

19 40. In addition to seeking to terminate plaintiff's franchise prematurely and in
20 contravention of the PMPA and Gasoline Dealers Bill of Rights Act, defendant's wrongful
21 actions, including the sending of unwarranted "notices of default," harassment of the
22 employees working in plaintiff's facility, interference with plaintiff's reasonable and lawful
23 contracts for sale of the franchise, and refusals to respond to plaintiff's reasonable inquiries
24

1 regarding operation of the business, have resulted in unnecessary additional costs and losses
2 to plaintiff, all in amounts to be proven at trial

3 **VI. Prayer for Relief**

4 WHEREFORE, plaintiff prays for the following relief

5 1. Preliminary injunction and such other orders as the court deems necessary and
6 equitable enjoining defendant from terminating the Agreements;

7 2 Judgment for permanent injunction enjoining defendant from interfering with
8 and wrongfully attempting to terminate plaintiff's rights pursuant to the Agreement and in
9 the Facility;

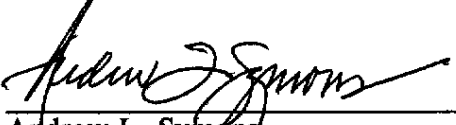
10 3. Judgment in plaintiff's favor against defendant for plaintiff's losses and
11 damages, in amounts to be proven at trial or on further proceedings herein, resulting from
12 defendant's wrongful interference with plaintiff's business and contractual expectancies and
13 wrongful attempts to terminate plaintiff's rights and interests under the Agreements and in
14 the Facility;

15 4. Judgment in plaintiff's favor against defendant for plaintiff's costs incurred
16 herein, including a reasonable amount for plaintiff's attorney's fees and expenses; and

17 5 Such other and further relief as the court deems just, equitable and necessary
18 to afford complete relief to plaintiff.

19 DATED this 9th day of January, 2003.

20 INSLEE, BEST, DOEZIE & RYDER, P S

21
22 By 
23 Andrew L. Symons
24 Attorneys for Plaintiff
W.S.B.A. # 7770